

SC1405.AP4. APPENDIX 4 OF SUBCHAPTER 1405

PREMIUM PAY (OVERTIME, NIGHT, SUNDAY, OR HOLIDAY)

- References:
- (a) Chapter 29, United States Code, "Fair Labor Standards Act of 1938," as amended
 - (b) Title 5, Code of Federal Regulations, Part 551, "Pay Administration Under the Fair Labor Standards Act"
 - (c) Chapter 53, Subchapter IV of title 5, United States Code, "Prevailing Rate Systems"
 - (d) Section 5343 of title 5, United States Code, "Prevailing Rate Determinations; Wage Schedules; Night Differentials"
 - (e) Section 5544 of title 5, United States Code, "Wage-Board Overtime and Sunday Rates Computation"
 - (f) Title 5, Code of Federal Regulations, Part 532, "Prevailing Rate Systems"
 - (g) OPM Operating Manual, "Federal Wage System, Nonappropriated Fund"
 - (h) Title 5, Code of Federal Regulations, Part 550, "Pay Administration"
 - (i) Section 5543 of title 5, United States Code, "Compensatory Time Off," 1998

SC1405.AP4.1. OVERTIME PAY RULES

These rules vary depending on whether the employee is exempt or nonexempt from FLSA (reference (a)) and is assigned to a crafts and trades or white-collar position. Table SC1405.AP4.T1. references the laws and regulations, and provides policy and guidance.

SC1405.AP4.2. FLSA EXEMPT OR NONEXEMPT DETERMINATION

The criteria in 5 CFR 551, Subpart B (reference (b)) should be used to make this determination. The designation must be documented on the position description and personnel action documents. Based on 5 CFR 551 (reference (b)) criteria, all employees properly placed in paybands NF-1 and NF-2 are designated nonexempt unless they are "permanently stationed" in an exempt area as defined in 5 CFR 551.102 (reference (b)).

SC1405.AP4.3. NIGHT, SUNDAY, AND HOLIDAY PAY

Since FLSA does not cover night, Sunday, or holiday pay, the exempt or nonexempt status is not a factor in determining such pay. The prevailing rate law covering crafts and trades employees, Pub. L. 92-392 (1972) (reference (c)), does cover this pay. Therefore, there are two categories of employees for purposes of applying rules for night, Sunday, and holiday pay: crafts and trades, and white-collar.

SC1405.AP4.3.1. Crafts and Trades Employees. Payment for night, Sunday, and holiday work shall comply with section 5343 (reference (d)); and section 5544 (reference (e)); 5 CFR 532.505, .507, and .509 (reference (f)); and OPM Operating Manual (reference (g)).

SC1405.AP4.3.2. White-Collar Employees. There is no law or regulation external to the Department of Defense that addresses night, Sunday, or holiday pay for NAF white-collar employees. Components may grant these payments in consideration of the prevailing practice in the locality, and recruitment and retention problems. Payments may be less than, but may not exceed, payments under 5 CFR 550 (reference (h)).

Table SC1405.AP4.T1. OVERTIME PAY RULES FOR NAF EMPLOYEES

CATEGORY	WHERE RULES ARE FOUND	GUIDANCE
1. Nonexempt Crafts and Trades	<ul style="list-style-type: none"> • FLSA • 5 USC 2105(c)(1)(C) • 5 CFR 551 • 5 USC 5543 (concerning compensatory time) 	<ul style="list-style-type: none"> • OT pay for hours worked in excess of 8 per day and 40 per week (5 CFR 551.501(a)) • Paid leave is counted as hours worked (5 CFR 551.401(b)) • Compensatory time off is authorized (5 USC 5543 as amended by Section 1610 of Pub. L. 104-201, FY97 Defense Authorization, in addition to compensatory time off provided by 5 USC 6123(a)(1)). Compensatory time off must be used by the end of the 26th pay period after that in which it was earned or be paid at the overtime rate at which it was earned if not used within established time period. • OT rate = 150% of hourly regular rate (5 CFR 551.511 & 5 CFR 551.512)
2. Nonexempt white-collar	<ul style="list-style-type: none"> • FLSA • 5 USC 2105(c)(1)(C) • 5 CFR 551 	<ul style="list-style-type: none"> • OT pay only for hours worked in excess of 40 hours per week (5 CFR 551.501(a)(4)) • Paid leave is not counted toward hours worked (5 CFR 551.401(b)) • Compensatory time off is not authorized (5 USC 5543 does not apply) except as it may be applied to those on flexible work schedule per 5 USC 6123(a)(1) • OT rate = 150% of hourly regular rate (5 CFR 551.511 & 5 CFR 551.512)
3. Exempt Crafts and Trades	<ul style="list-style-type: none"> • 5 USC 5544 • 5 CFR 532.503 • OPM Operating Manual, "Federal Wage System, Nonappropriated Fund" 	<ul style="list-style-type: none"> • OPM rules apply • OT pay for hours worked in excess of 8 per day and 40 per week (5 USC 5544(a)) • Compensatory time off is authorized (5 USC 5543 as amended by Section 1610 of Pub. L. 104-201, FY97 Defense Authorization in addition to compensatory time off provided by 5 USC 6123(a)(1)). Compensatory time off must be used by the end of the 26th pay period after that in which it was earned or be paid at the overtime rate at which it was earned if not used within established time period. • Paid leave is counted as hours worked (5 CFR 532.503(b)) • OT rate = 150% of basic rate of pay (5 USC 5544(a))

CATEGORY	POLICY
4. Exempt white-collar	<p>No laws, or regulations external to the Department of Defense, establish overtime pay policy for exempt white-collar NAF employees. DoD-wide policy is that Components may grant overtime pay to these employees as follows:</p> <p>DEFINITIONS</p> <ul style="list-style-type: none"> – Overtime Pay: Pay for officially ordered and approved overtime work. – Overtime Work: Time in a duty status in excess of 40 hours in an administrative workweek – Duty Status: Time on duty at the workplace, and not on paid leave or otherwise absent from duty. – Administrative Workweek: The 40 hour workweek established for 7 consecutive calendar days for full time employees. It need not coincide with the calendar week, but may begin on any day and at any hour. <p>AUTHORIZED AND APPROVED RULE: No employee identified as an exempt white-collar employee may be paid overtime pay or given compensatory time off for work in excess of 40 hours in an administrative workweek unless the overtime work is specifically authorized and approved in advance. The doctrine of compensation for hours "permitted or suffered" shall not apply. Overtime pay or compensatory time off for "administratively uncontrollable overtime work" is not authorized.</p> <p>OVERTIME PAY CALCULATION: The overtime rate equals 1½ times the basic pay rate for hours that exceed 40 in duty status in a workweek, provided the employee's basic rate does not exceed the locality rate for grade GS-10 /1. When it exceeds the locality rate for GS-10/1, the overtime rate equals 1½ times the rate for grade GS-10/1.</p> <ul style="list-style-type: none"> – <u>Leave with Pay:</u> If an employee is on annual or sick leave, absent on legal holidays, or non-workdays established by Executive or administrative order, or absent on compensatory time during the basic workweek, the employee must be in a duty status an equal period or time before any remaining period may be paid for at overtime rates on the basis of exceeding 40 hours in a week. – <u>Nonpaid Absence:</u> A nonpaid absence is not counted as duty status in determining overtime pay. – <u>Night, Sunday, or Holiday Duty:</u> These duty hours are included in the hours of employment in the administrative workweek. <p>COMPENSATORY TIME OFF IN LIEU OF OVERTIME PAY: Compensatory time off may be granted to exempt white-collar employees in lieu of overtime pay for an equal amount of irregular or occasional overtime work. Compensatory time off must be used by the end of the 26th pay period after that in which it was earned.</p>